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KNOBBE MARTENS OLSON & BEAR LLP			EXAMINER	
2040 MAIN STREET			STRANGE, AARON N	
FOURTEENTH FLOOR				
IRVINE, CA 92614			ART UNIT	PAPER NUMBER
			2448	
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/681,051	<b>Applicant(s)</b> GIBSON ET AL.
	<b>Examiner</b> AARON STRANGE	<b>Art Unit</b> 2448

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 June 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12,14-28 and 30-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12,14-28 and 30-42 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to the rejection of claims 31-42 under 35 U.S.C. §101 have been fully considered and are persuasive. Accordingly, that rejection has been withdrawn.
  
2. Applicant's remaining arguments with respect to claims 1-12, 14-28 and 30-42 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6, 7, 10-12, 14-16, 17-20, 22, 23, 26-28, 30-37, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zisapel et al. (US 6,665,702) in view of Gnagy et al. (US 7,058,633).
  
5. With regard to claim 1, Zisapel discloses a method comprising the steps of: providing a server application at a first server (LB1), and a client application at a client terminal (client 26), the first web server comprising a server other than a server

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corresponding to the content store and the network servers corresponding to the mirror instances (content is stored on servers in mirrored server farms 10 and 12) (fig. 1; col. 13, ll. 3-6), wherein the client terminal is connected to the first web server by a first connection (client may communicate with LB1 via the FTP/HTTP connection)(col. 14, ll. 22-25), wherein the client terminal is connected to the network through the first server (client requests pass through LB1)(col. 14, ll. 22-25), and wherein the server application and the client application communicate to provide localization decisions without user interaction (preferred mirrors are selected without user interaction)(col. 14, ll. 8-25);

determining localization information for each mirrored instance of the content store, wherein the localization information comprises the number of hops and latency from each mirrored instance of the content store to any of the first server and the client terminal (network proximity of each mirrored instance is determined, which includes latency and hop count information)(col. 14, ll. 31-46);

storing the determined localization information in a localization database (proximity information is stored in the proximity table)(col. 15, ll. 24-25);

receiving a request at the first server over the first connection from a user at the client terminal, the request corresponding to mirrored content (client requests content from LB1)(col. 14, ll. 23-27);

querying the localization database and applying a set of rules to the stored localization information through the server application at the first server to determine a preferred mirror instance for the client terminal, the rules comprising a function of the stored hop information and the stored latency information between each of the mirror

instances and the client terminal (closest server is selected based on the latency and hop count information)(col. 14, l. 41 to col. 15, l. 25).

Zisapel fails to specifically disclose that the first server (LB1) is a web server or that the server provides links to localized content by generating a web page responsive to the request that includes a selectable localized link to the determined preferred mirror instance and transmitting the web page to the client, wherein the selectable localized link has yet to be selected by the user.

Gnagy teaches generating a web page in response to a request that includes replacing any links in an original version of the requested page with selectable localized links to mirrors, allowing the user to be directed to the mirrored content upon subsequent selection of the localized links (col. 5, ll. 48-63; col. 6, ll. 10-13). This would have been an advantageous addition to the system disclosed by Zisapel since it would have allowed links in a requested web page to be replaced with links to preferred mirrored versions of the linked content, permitting more efficient routing of client requests (Gnagy; col. 2, ll. 49-51).

Therefore, it would have been obvious to one of ordinary skill in the art to provide the client with a web page containing a link to a determined preferred mirror server to permit more efficient routing of client requests, such as to a close mirror server.

6. With regard to claim 2, Gnagy further discloses automatically directing the user to the local mirror instance when the user selects the selectable localized link within the

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dynamically generated web page (links are replaced, so the client will be directed to the new URL upon activation of the link).

7. With regard to claim 3, Zisapel further discloses that the function of the stored hop information and the stored latency information between each of the mirror instances and the client terminal comprises a determination of a mirror instance having the lowest number of hops (col. 14, ll. 41-46).

8. With regard to claim 4, while the system disclosed by Zisapel and Gnagy shows substantial features of the claimed invention (discussed above), it fails to disclose that the preferred mirror is the mirror having the lowest number of hops, considering the latency only when the number of hops is the same.

Zisapel teaches that the "network proximity" is determined by considering various attributes such as latency, the number of hops, and various other factors (col. 14, ll. 4—46). One of ordinary skill in the art would have recognized that these factors could have been considered in any combination preferred by the user, and that the various algorithms for determining a preferred mirror would have merely been predictable variations of each other.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any particular algorithm for locating the user's preferred mirror, including one that selects the mirror having the lowest hop count and breaking ties using latency.

9. With regard to claim 6, Zisapel further discloses that the localization information further comprises mirror server load information (col. 15, ll. 15-25).
10. With regard to claim 7, Zisapel further discloses that the localization information further comprises mirror server operation information (availability)(col. 15, ll. 15-25).
11. With regard to claim 10, Zisapel further discloses the first web server is associated with a service provider (each load balancer is associated with a server farm)(col. 13, ll. 3-12).
12. With regard to claim 11, Zisapel further discloses that the localization information is stored at the first web server (col. 15, ll. 8-25).
13. With regard to claim 12, Gnagy further discloses that the request comprises corresponds to a web page (col. 5, ll. 48-50).
14. With regard to claim 14, Zisapel further discloses that the preferred mirror is further determined from the request IP address of the client terminal (site closest to the client is selected based on the subnet portion of the client's IP)(col. 15, ll. 26-32).

15. With regard to claim 15, Zisapel further discloses that the preferred mirror is further determined from the request IP network of the user (site closest to the client is selected based on the subnet portion of the client's IP)(col. 15, ll. 26-32).
16. With regard to claim 16, Gnagy further discloses that the selectable localized link comprises an HTTP link (web site URLs)(col. 6, ll. 10-13).
17. Claims 17-20, 22, 23, 26-28, 30-34, 36, 37 and 42 are rejected under the same rationale as claims 1-4, 6, 7, 10-12 and 14-16, since they recite substantially identical subject matter. Any differences between the claims do not result in patentably distinct claims and all of the limitations are explicitly or inherently taught by the above cited art.
18. With regard to claim 35, Zisapel further discloses that the unique address comprises a terminal IP address (client has an IP address)(col. 13, ll. 25-29).
19. With regard to claim 41, Zisapel further discloses that the localization information further comprises triangulation tests and performance tests of the networks (col. 13, ll. 19-47).
20. Claims 5, 8, 9, 21, 24, 25, 38 and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Zisapel et al. (US 6,665,702) in view of Gnagy et al. (US 7,058,633) further in view of Kirkby et al. (US 6,671,285).

21. With regard to claims 5, 8 and 9, while the system disclosed by Zisapel and Gnagy shows substantial features of the claimed invention (discussed above), it fails to disclose that the localization information comprises information about costs associated with transmitting the mirrored content to the client, such as cost information associated with each network segment.

Kirkby teaches a method of determining a preferred route between two entities in a network by storing and comparing cost information associated with each network segment to locate the lowest cost route (col. 6, ll. 20-29). This would have been an advantageous addition to the system disclosed by Zisapel and Gnagy since it would have allowed cost information to be considered when determining the preferred mirror for a particular content item.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to compare cost information associated with each network segment along a path to each mirror location to locate the lowest cost mirror associated with a particular content item.

22. Claims 21, 24, 25, 38 and 39 are rejected under the same rationale as claims 5, 8 and 9, since they recite substantially identical subject matter. Any differences between the claims do not result in patentably distinct claims and all of the limitations are explicitly or inherently taught by the above cited art.

23. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zisapel et al. (US 6,665,702) in view of Gnagy et al. (US 7,058,633) further in view of Official Notice.
24. With regard to claim 40, Zisapel and Gnagy fail to specifically disclose that the localization information comprises a map of all IP address space within a global routing table.

The Examiner takes Official Notice that the use of global routing tables was old and well known in the art at the time the invention was made. One of ordinary skill in the art would have recognized that a global routing table would have been a predictable variation of the triangulation-based routing system used by Zisapel.

Therefore, it would have been obvious to store the localization information in a global routing table having a map of all IP address space, since it would have allowed the servers to make load balancing decisions without running tests specific to each client, reducing the time necessary to make a routing decision.

### ***Conclusion***

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON STRANGE whose telephone number is (571)272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron Strange/  
Primary Examiner, Art Unit 2448